

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAYTH F. MANSOUR,

Defendant-Appellant.

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UNPUBLISHED

June 26, 2003

No. 239156

Oakland Circuit Court

LC No. 00-171543-FH

Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth degree criminal sexual conduct. He was sentenced to two years probation with the first six months to be served in jail. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

**I. FACTS**

After introducing himself to complainant at the gas station where she worked and spending one to two hours with her, defendant accompanied her outside. Complainant testified that when she opened her car door, defendant came up behind her, pinned her in the corner of her car, felt her shoulders, back and buttocks, tried to kiss her and bit her about the mouth. She said that she could feel his erection rubbing up against her buttocks through his pants. Complainant went back inside when a customer came. The customer called the police at her request.

The case subsequently appeared before the trial court. In the process of selecting jurors, the judge explained:

“...we’ve got a computer list of all the jurors. All right? And I have my computer list. My computer list is the actual ranking in which they’ll be called. So we won’t have a drawing. I’ll just call these people by name.”

The judge then called juror number 461 for the first seat, juror number 449 for the second, juror number 436 for the third, juror number 520 for the fourth, et cetera. In other words, the computer had randomly selected the jurors from the pool. After voir dire, there were no challenges for cause. As for preliminary strikes, after conferring with

the defendant and an interpreter, defense counsel stated: “We accept the jury as it sits, your Honor.”

During the course of the trial, an interpreter was used. There is no record that the court made a determination of need. Defendant understood some or most English, but could not speak fluently. He answered some questions before the interpreter could translate. Although the defendant’s brother was once called up to help interpret, the interpreter otherwise appeared to competently handle matters. The record does not indicate that his interpreter was unqualified. The court reporter indicates that at times the interpreter translated and at other times the interpreter and defendant conferred. However, it is not clear whether she was just translating when the record indicated that they were conferring.

## II. ASSIGNMENT OF JURORS

### A. Standard of Review

The jury selection method in this case was not contested by trial counsel at any relevant time and, in fact, defense counsel accepted the jury selection method. The error is thus unpreserved for appellate review. Unpreserved errors are reviewed pursuant to the plain error standard of review. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

### B. Analysis

Defendant argues that the computerized method that was used for selecting the jury deprived him of the right to a fair jury trial. However, in *People v Green (On Remand)*, 241 Mich App 40, 47; 613 NW2d 744 (2000), the Court held that the identical method, which involved the “random assignment of juror numbers and the random selection of the venire from the jury pool by the computer,” satisfied the requirements of MCR 2.511(A)(2). The Court in *Green* directed that the use of this procedure when choosing replacement jurors be discontinued but held that it was nonetheless a sufficiently fair and impartial method. Here, the procedure was not used to seat replacement jurors. Accordingly, there is no basis for a finding of error.

## III. QUALIFIED INTERPRETER

### A. Standard of Review

If an accused person is about to be examined or tried and it appears to the judge that the person is incapable of adequately understanding the charge or presenting a defense to the charge because of a lack of ability to understand or speak the English language, the judge shall appoint a qualified person to act as an interpreter. MCL 775.19a. If defendant did not object to the qualifications of his interpreter at the time of the trial, defendant must show plain error that affected substantial rights. *People v Carines, supra*. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error "seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence." *Id.*

### B. Analysis

Defendant argues that his interpreter had limitations that denied him a fair trial. Defendant did not object and we find no plain error. *Carines supra* at 764. Defendant was entitled to a “qualified” interpreter under MCL 775.19a but the record does not indicate that his interpreter was unqualified. Defendant’s brother indicated that a word the interpreter was using to convey “testify” could be used to mean “confess”. He suggested an alternative word that cleared up the problem. Ultimately, there is no indication that any information was lost in translation. Defendant also points out that in the transcription of his actual testimony, the court reporter indicates that at times the interpreter translated and at other times the interpreter and defendant conferred. However, it is not clear whether she was just translating when the record indicated that they were conferring. Had defendant objected at the time, this could have been clarified. Notably, although the interpreter was supposed to translate verbatim, *People v Cunningham*, 215 Mich App 652; 546 NW2d 715 (1996), the record does not demonstrate that any deviations from this rule resulted in altered testimony or an inaccurate translation. In this regard, it is notable that defendant’s brother, who would have caught any problems, was in the courtroom.

#### IV. INEFFECTIVE ASSISTANCE OF COUNSEL

##### A. Standard of Review

The right to the effective assistance of counsel is substantive and focuses on the actual assistance received. *People v Pubrat*, 451 Mich 589, 596; 548 NW2d 595 (1996). Generally, to establish ineffective assistance of counsel, a defendant must show: (1) that counsel’s performance was below an objective standard of reasonableness under prevailing professional norms; (2) that there is a reasonable probability that, but for counsel’s error, the result of the proceedings would have been different, *Bell v Cone*, 535 US 685; 122 S Ct 1843, 1850; 152 L Ed 2d 914 (2002); and (3) that the resultant proceedings were fundamentally unfair or unreliable, *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). Certain circumstances are so likely to prejudice the defendant that no showing of prejudice is required, including a complete denial of counsel or an entire failure to subject the prosecutor’s case to meaningful adversarial testing. *Bell, supra* at 1851.

##### B. Analysis

Defendant has not established that his attorney’s performance fell below an objective standard of reasonableness under prevailing professional norms, that there is a reasonable probability that the result of the proceedings would have been different, *Bell v Cone*, 535 US 685; 122 S Ct 1843, 1850; 152 L Ed 2d 914, 927 (2002); *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000), or that the proceedings were fundamentally unfair or unreliable, *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). The failure to object to the jury selection process was not error. The record does not indicate that the interpreter in any way compromised the proceedings. Defendant has not identified any jurors that should have been challenged for cause or by way of a peremptory strike. Moreover, he has not established that the voir dire was inadequate or that any useful information would have been garnered with a more extensive voir dire. Similarly, he does not set forth what additional argument should have been made during closing or indicate how the closing argument was otherwise inadequate. Finally, he has not identified any witnesses to the crime that might have been called or any character witnesses who would have testified in his favor.

While defendant requests that the matter be remanded for a hearing pursuant to *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973), we conclude that his failure to offer proofs as to what might be established as to any of these matters militates against it. Since we find no error, we coextensively find that there is no cumulative effect of errors that would warrant reversal.

## V. CRIMINAL SEXUAL CONDUCT

### A. Standard of Review

In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Johnson, supra*. However, this Court should not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 478 (1992). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 455 (2002). A prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

### B. Analysis

Defendant argues that the evidence was insufficient to establish a sexual contact, which is required to convict of fourth-degree CSC. MCL 750.520d. Criminal sexual conduct in the fourth degree is defined in pertinent part:

(1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exists:

(a) Force and coercion are used to accomplish the sexual contact.

Sexual contact includes:

“The intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can be reasonably be construed as being for the purpose of sexual arousal or gratification.” MCL 750.520a(k)

“Intimate parts” include the buttocks. MCL 750.520a(c).

Complainant testified that, among other things, defendant touched her buttock and she could feel his erection as he pressed against her body.

These were “intimate parts” under MCL 750.520a(c) and the intentional touching of the clothing covering these intimate parts was sufficient under MCL 750.520a(k) to establish a sexual contact.

Affirmed.

/s/ David H. Sawyer  
/s/ Patrick M. Meter  
/s/ Bill Schuette